vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.199 OF 2005

Smt.Bimladevi Achhelal Yadav ... Petitioner

V/s.

B.M.C. & Ors. ... Respondents

Mr.M.P. Vashi for Petitioner
Mr.N.V. Walawalkar for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 16, 2005**

P.C.:

. This Petition challenges the action taken by the Respondent-Corporation preventing the Petitioner from acting as a Municipal Councillor. Initially, the election in the constituency had resulted in one Shantidevi Kamleshkumar Yadav being declared as the winning candidate. This being a reserved constituency, her caste certificate was sent to caste scrutiny committee in accordance with the provisions of the Bombay Municipal Corporation Act, for verification. The Scrutiny Committee found that her caste certificate was bogus and invalidated the same. Consequently, the Bombay Municipal Corporation informed her that she was deemed to have vacated the office as Municipal Corporator from 30.5.2003. This candidate Shantidevi

challenged the decision of the Municipal Commissioner by filing a writ petition. In that writ petition, this Court passed the following operative order on 1.12.2004:

> 11.(i) The election of respondent No.4 as declared by the impugned order shall be subject to final outcome of the instant writ petition. Respondent No.4 shall not be entitled to exercise her right of vote in the house and draw the allowances. Respondent No.4 is otherwise entitled to perform all the functions as elected councillor of the Mumbai Municipal Corporation of the concerned Ward.
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> (ii) Liberty to apply for modification of the interim order either after disposal of writ petition No.9231 of 2003 or modification of the interim order passed therein.

2. Accordingly, the petitioner was declared elected and was allowed to function as an elected municipal councillor for the concerned ward. Her caste certificate was then sent for verification to the caste scrutiny committee as required under section 10 of the MMC Act. It was found by the Caste Scrutiny Committee that the caste certificate obtained by the petitioner was false and such an intimation was sent to the Commissioner. Resultantly, the Petitioner was deemed to have vacated office. The Petitioner challenged the caste scrutiny committee’s finding before the Division Bench of this Court in writ petition No.4272 of 2005. The Division Bench has found that an unlawful attempt was made by the petitioner to seek the benefit of a

reservation meant for the other backward classes. The Division Bench accepted the findings of the Scrutiny Committee and dismissed the writ petition.

3. In my view, therefore, there is no case of contempt made out in this Petition. It is by operation of law that the Petitioner has not been allowed to function as Municipal Councillor. The order directing the Respondent-Corporation to allow the Petitioner to function as a Councillor passed by this Court does not in any manner prevent the MMC from carrying out the procedure required under section 10. Nor does this order direct that the provisions of law should not be enforced. Petition dismissed.